



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: VICTORIA P. SIMMONS
Regulatory Coordinator
Department of Medical Assistance Services

FROM: PAIGE S. FITZGERALD
Special Counsel to DMAS

DATE: October 10, 2003

SUBJECT: Proposed Regulation concerning Methods and Standards for Establishing Payment Rates—Long Term Care Services: Transition to New Capital Payment Method; Ownership Criteria for Fair Rental Value

I am in receipt of the attached proposed regulation concerning ownership criteria for nursing facilities to qualify for the fair rental value payment methodology. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulation and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. This regulation will enable the Director, in lieu of the Board of Medical Assistance Services, to provide specific direction to participating nursing facilities of DMAS' reimbursement methodologies relating to when the conversion to fair rental value may occur, upon the sale of a nursing facility.

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The authority for this proposed regulation derives from federal regulations, specifically 42 C.F.R. § 447.252, which requires each State plan to “specify comprehensively the methods and standards used by the agency to set payment rates” for long-term care facility services. In addition, 42 U.S.C. § 1396a(a)(13) requires that the payment methodologies for nursing facilities be set out in the State plan.

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment